IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.141 OF 2005.

Smt.Rajanikaa S. Shah : Appellant.

versus

The Municipal Corporation for

Greater Bombay and ors. : Respondents.

Mr.M.N.Dhond for the appellant.

Mr.J.J.Xavier for the BMC.

CORAM : D.G.DESHPANDE,J.

DATED : 4th July 2005.

ORAL ORDER

1. This is an appeal filed by the appellant/plaintiff against the dismissal of her suit which was filed for challenging the notice under Section 351 of the BMC Act.

2. The counsel for the appellant firstly contended that the name of the appellant is

Smt.Rajanikaa S. Shah and the notice was issued to Shri Rajanikant S. Shah. Therefore, according to him, this is not a proper notice. There is no substance in this submission. Because the address in the notice is same and knowing fully well the contents of the notice and where it was going to hit, this suit was filed.

3. Secondly it was contended by the counsel for the appellant that the landlord has supported the case of the plaintiff. But this support by the landlord is by way of his oral evidence. No documentary evidence is there to substantiate the contentions of the plaintiff. Therefore, this contention was rightly rejected.

4. The third contention of the counsel for the appellant was that some trust has 30% interest in the property. If that is so, the trust will take the care of the property. But the question was of the right of the plaintiff in the structure about which this notice under section 351 was given. The plaintiff has miserably failed to prove the same.

5. Lastly it was contended that at any rate

the structure is in existence since 1991, therefore, the plaintiff may be given liberty to apply to the corporation for regularisation. No such judicial order is necessary and is required in the instant case. Hence the appeal is dismissed as there is no merit. The plaintiff may apply to the corporation for regularisation but that application will not come in the way of this judicial order.

[D.G.DESHPANDE]